CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

CASE OF ZHIGALEV v. RUSSIA

(Application no. 54891/00)

JUDGMENT

STRASBOURG

6 July 2006

FINAL

11/12/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Zhigalev v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr K. HAJIYEV, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 15 June 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 54891/00) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Vladimir Alekseyevich Zhigalev ("the applicant"), on 28 January 2000.

2. The applicant, who had been granted legal aid, was represented by Ms M. R. Voskobitova and Ms K. A. Moskalenko, lawyers with the International Protection Centre in Moscow. The Russian Government ("the Government") were represented by Mr P. A. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that his right to the peaceful enjoyment of his possessions had been violated as a result of the annulment, in domestic proceedings brought by the public prosecutor, of documents certifying his rights to a plot of land allotted for the founding of Luch Farm. He also alleged that his motion alleging the expiry of a limitation period had not been examined in those proceedings, in breach of Article 6 of the Convention.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

6. A hearing took place in public in the Human Rights Building, Strasbourg, on 20 January 2005 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr P. LAPTEV, Representative of the Russian Federation at the European Court of Human Rights,
Mr Y. Berestnev, *Counsel*,
Mr M. Vinogradov, *Adviser*;

(b) *for the applicant*
Ms M. Voskobitova,
Ms K. Moskalenko, *Counsel*.

The Court heard addresses by Mr Laptev, Ms Voskobitova and Ms Moskalenko.

7. Following the hearing on admissibility and the merits (Rule 54 § 3), the Court declared the application admissible.

8. The applicant and the Government each filed further written observations (Rule 59 § 1). In addition, third-party comments were received from the following partners in Luch Farm: Mr A.V. Gerasimov, Mr S.V. Kapustin, Mr A.F. Kapustin, Mr A.N. Kazyulkin's heir Ms S.N. Kazyulkina and Mr N.N. Belov's heir Ms V.A. Belova. They were represented by Ms G. Zambrovskaya, a lawyer practising in Kursk, and had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2). The parties replied to those comments (Rule 44 § 5).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1949 and lives in the village of Nemcha in the Kursk region.

10. The applicant is an agronomist. When collective farms were being privatised, he left the Kapustin collective farm in the Bolshesoldatskiy District, Kursk Region, and became head of a private farm "Luch" ("Luch Farm"). In 1992, by decisions of the Head of the Bolshesoldatskiy District Administration of the Kursk Region, Luch Farm was granted two plots of agricultural land – 31 hectares from the lands of the former Kapustin collective farm and 315 hectares from a special State land fund. As the

applicant considered himself the sole owner of the land and the other five partners in Luch Farm disagreed with his position, disputes began between them. Luch Farm has been involved in various court proceedings since 1997 and the land has not been farmed since that time.

A. Proceedings concerning Resolution no. 157

11. By a ruling of 10 April 1997 the Commercial Court of the Kursk Region pointed out violations of law in the setting up and registering of Luch Farm and suggested that the Bolshesoldatskiy District Administration of the Kursk region ("the District Administration") should take steps to remedy the situation. On 23 July 1997 the Head of the District Administration adopted Resolution no. 157 whereby, *inter alia*, Land Certificate no. 30020006, drawn up in the name of Mr V.A. Zhigalev, was annulled as having been issued in breach of the law and the rights of the other partners in Luch Farm. Resolution no. 112 of 14 April 1992, issued by the Head of the District Administration (by which Luch Farm was registered and on which Mr V.A. Zhigalev was named as head of Luch Farm) was supplemented with a list of five partners in Luch Farm, comprising Mr A.V. Gerasimov, Mr S.V. Kapustin, Mr N.N. Belov, Mr A.N. Kazyulkin and Mr A.F. Kapustin.

12. Acting as head of Luch Farm, Mr Zhigalev brought proceedings on behalf of the farm, seeking to have Resolution no. 157 declared invalid. The proceedings ended with a decision by the Federal Commercial Court of the Central Circuit of 10 December 1997 granting Luch Farm's action, on the ground that the Head of the District Administration had had no jurisdiction to make such decisions, which could only be made by a court with regard to annulment of the land certificate, and on the basis of the relevant documents, adopted by the farm, with regard to including the list of its partners in the Resolution.

B. Criminal proceedings against the Chairman of the Land Committee

13. On 25 May 1998, following an application by the Head of the District Administration, an investigator from the Bolshesoldatskiy District Prosecutor's Office initiated criminal proceedings, having detected that two copies of a Land Certificate concerning Luch Farm's land – one issued to Mr Zhigalev by the Bolshesoldatskiy District Committee for Land Reform and Land Resources ("the Land Committee") and the other one held by the Land Committee, which ought to have been signed by the former Head of the District Administration, bore the signatures of two different persons.

14. As a result of the investigation, it was established that, on the basis of Resolution no. 111 on the allocation of land to Luch Farm, issued by the

Head of the District Administration on 14 April 1992, Mr Kolkov, former Chairman of the Land Committee, had prepared Land Certificate no. 300200006 concerning a plot of 30.9 hectares of land. The investigator found that, as a result of negligent performance of his duties, Mr Kolkov had failed to specify in the Land Certificate that the land had been allotted to Luch Farm, and not to Mr Zhigalev alone. He had also failed to register this Land Certificate with the Land Committee.

15. Later, on the basis of Resolution no. 167 of 14 July 1992 on amendment of the above Resolution no. 111, issued by the Head of the District Administration, Mr Kolkov had prepared another Land Certificate, no. 30020006, concerning the same 30.9-hectare plot and a plot of 315 hectares. It had been properly registered in the relevant records of the Land Committee as no. 7. The investigator found that, as a result of negligent performance of his duties, Mr Kolkov had again failed to specify in this Land Certificate that the land had been allotted to Luch Farm, including all its partners, and not to Mr Zhigalev alone. Another oversight was that the Land Certificate contained no reference to District Administration Resolution no. 167 of 14 July 1992, on the basis of which it had been issued. Furthermore, an original copy of the Land Certificate belonging to the Land Committee had been lost, and there remained only one copy, that issued to Mr Zhigalev. Mr Kolkov had then prepared another unnumbered Land Certificate, identical to Land Certificate no. 30020006 save that it was issued in the name of Luch Farm. This had been kept in the Land Committee's archives. The investigator found that this Land Certificate was unlawful, in that it had not been signed by the Head of the District Administration and did not bear the District Administration's official stamp.

16. According to statements by Mr Kolkov, he had considered that, by drawing up the Land Certificates in Mr Zhigalev's name, he had actually issued them to Luch Farm inasmuch as Mr Zhigalev had been head of the farm.

17. In his decision of 17 September 1998, the investigator held that Mr Kolkov's actions contained elements of negligence punishable under Article 293 of the Criminal Code. However, as the two-year limitation period applicable to this offence, committed in 1992, had expired, the prosecution was time-barred. The proceedings were therefore terminated. On 13 October 1998 a copy of the decision was served on Mr Zhigalev.

C. Proceedings concerning the dismissal of partners in Luch Farm

18. On 18 September 1996 Mr Zhigalev, head of Luch Farm, decided that Mr A.N. Kazyulkin and Mr S.V. Kapustin were to be dismissed from Luch Farm. On 3 October 1996 the same decision was taken in respect of Mr A.V. Gerasimov. The farmers challenged the lawfulness of their dismissal in court.

19. By a judgment of 28 December 1998 the Bolshesoldatskiy District Court of the Kursk Region established that the above-named individuals had always been partners in Luch Farm and not its hired workers. Accordingly, the court held that Mr Zhigalev had had no authority to dismiss them.

D. Proceedings concerning Resolutions nos. 153, 154 and 157

20. Acting as head of Luch Farm, Mr Zhigalev brought proceedings against the District Administration on behalf of the farm, seeking compensation in connection with the adoption of Resolutions nos. 153 and 154 of 29 October 1996 and Resolution no. 157 of 23 July 1997. Mr Zhigalev alleged that the adoption of those Resolutions had prevented cultivation of the land. He claimed compensation for expenses which the farm would necessarily incur in remedying the situation, and for loss of profit.

21. In a judgment of 5 February 1999 the Commercial Court of the Kursk Region established the facts of the case as follows.

22. By Resolution no. 111 of 14 April 1992, issued by the Head of the Bolshesoldatskiy District Administration, Luch Farm had been granted a plot of 31 hectares from the lands of the former Kapustin collective farm and a plot of 315 hectares in lease for five years. By the same Resolution V.A. Zhigalev had been confirmed as head of Luch Farm and A.V. Gerasimov, S.V. Kapustin, N.N. Belov, A.N. Kazyulkin and A.F. Kapustin as partners in Luch Farm.

23. By Resolution no. 112 of 14 April 1992, issued by the Head of the District Administration, Luch Farm had been registered as a legal entity.

24. Land Certificate no. 30020006 had been issued to V.A. Zhigalev in pursuance of the above Resolution for the founding of Luch Farm.

25. By Resolution no. 167 of 14 July 1992, issued by the Head of the District Administration, the earlier Resolution no. 111 had been amended in order to specify the size of the plot of land given in life-time inheritable possession to each partner in the farm.

26. Resolution no. 153 of 29 October 1996, issued by the Head of the District Administration, had concerned the renaming of Luch Farm as Volna farm by its partners and their re-election of the farm's head following a vote of no confidence to V.A. Zhigalev. It had also ordered the Land Committee to annul the Land Certificate issued to Luch Farm and to prepare new documents accordingly. By Resolution no. 154 of 29 October 1996, issued by the Head of the District Administration, Luch Farm had been re-registered as Volna Farm. Resolutions nos. 153 and 154 had then been reversed by the Head of the District Administration, and, when the court delivered its judgment on 5 February 1999, Resolutions nos. 111 and 112 of 14 April 1992 were in force in their earlier version.

27. By Resolution no. 157 of 23 July 1997, issued by the Head of the District Administration, Land Certificate no. 30020006 was annulled and Resolution no. 112 of 14 April 1992 had been made more precise in respect of the partners in the farm. By a decision of the Federal Commercial Court of the Central Circuit of 10 December 1997, Resolution no. 157 had been declared null and void.

28. Having examined the evidence in the case, the Commercial Court of the Kursk Region found that there was no single document from which it would follow that Mr Zhigalev had been the sole founder of Luch Farm. The court held that Luch Farm had been set up by the six farmers (V.A. Zhigalev, A.V. Gerasimov, S.V. Kapustin, N.N. Belov, A.N. Kazyulkin and A.F. Kapustin) and the farm's property had been formed from their property shares. In accordance with the Farming Enterprise Act, the property of a farm belonged to its partners as their common share property or common joint property, if the latter course was decided unanimously by a farm's partners. According to the legislation in force at the material time (the Civil Code), a farm's property was common joint property.

29. The court found no causal link between the adoption of Resolutions nos. 153, 154 and 157 and the failure of the farmers to farm the land. The court held that there had been no obstacles to cultivating Luch Farm's land. It held that Mr Zhigalev had failed to substantiate his claims and that it was in fact his attitude that had brought about the possibility of losses for the farm.

30. In its judgment of 5 February 1999 the court dismissed Mr Zhigalev's claims as manifestly ill-founded. That judgment was upheld by a decision of the Federal Commercial Court of the Central Circuit of 5 May 1999.

E. Proceedings concerning the validity of the Land Certificates

31. On 16 February 1999 the Prosecutor of the Kursk Region brought an action against the District Administration and the Land Committee in defence of state and public interests before the Commercial Court of the Kursk Region.

32. The prosecutor requested that Land Certificate no. 300200006 concerning the right of ownership to the plot of 30.9 hectares, which had been issued by the Land Committee in Mr Zhigalev's name, be declared null and void. The same request was made in respect of Land Certificate no. 30020006 on the right of ownership to the same plot of 30.9 hectares and the right of life-time inheritable possession to the 315-hectare plot, which had also been issued by the Land Committee in Mr Zhigalev's name. The prosecutor stated, *inter alia*, that the Land Certificates certifying Mr Zhigalev as the sole owner of the land had impaired the rights of the

other five partners in the farm, each of whom had been entitled to his share of the land.

33. The prosecutor also requested a finding of invalidity in respect of Resolutions no. 111 of 14 April 1992, on the allocation of a plot of land for the organisation of Luch Farm, and no. 167 of 14 July 1992, on the amendment of Resolution no. 111, both of which had been issued by the Head of the District Administration. The prosecutor argued that the size of the plot of land given to Luch Farm had exceeded the relevant statutory limit.

34. The prosecutor requested that Mr Zhigalev, head of Luch Farm, be joined to the proceedings as a third party on the defendant's side.

35. On 10 March 1999 the Commercial Court of the Kursk Region ruled that Mr Zhigalev, head of Luch Farm, was to be joined to the proceedings as a third party because the submitted action concerned his interests. The court referred to Article 39 of the Code of Commercial Procedure of 1995, which regulated the procedural status of a third party who did not have separate claims with regard to the subject matter of a dispute.

36. By the same decision, the court ordered the parties to produce documentary evidence and scheduled a hearing for 31 March 1999.

37. On 31 March 1999 the court adjourned the hearing to 21 April 1999 in view of the Land Committee's failure to produce documentary evidence.

38. The court, composed of three judges, held a hearing on 21 April 1999. Representatives of the defendant authorities admitted the claim in full. The Land Committee explained that neither of the Land Certificates complied with Resolutions nos. 111 and 167, on the basis of which they had been issued.

39. Mr Zhigalev submitted an application to be recognised as a co-defendant in the case. In its ruling of 21 April 1999, the court refused the application on the ground that the prosecutor's action concerned the validity of the documents adopted by the District Administration and the Land Committee.

40. The head of Luch Farm argued that the prosecutor's claim should be rejected in view of the expiry of the relevant limitation period.

41. The prosecutor submitted that the limitation period had been interrupted by the District Administration's adoption, on 29 October 1996, of Resolution no. 153 on the amendment of Resolutions nos. 111 and 167. Resolution no. 153 had been reversed by the District Administration on 30 April 1998.

42. The court held that, in accordance with Article 199 § 2 of the Civil Code, a limitation period was applied exclusively at the request of a party to a case. As head of Luch Farm, Mr Zhigalev was not a party to the present proceedings pursuant to Article 34 of the Code of Commercial Procedure, and the court could not therefore apply this ground for rejecting the prosecutor's claim.

1. Judgment of 21 April 1999

43. Having examined the evidence in the case and heard the prosecutor, the defendants and the head of Luch Farm in his capacity as a third party, the Commercial Court of the Kursk Region established the facts of the case as follows, as summarised in its judgment of 21 April 1999.

44. On 9 March 1992 V.A. Zhigalev had lodged an application with the Administration of the Bolshesoldatskiy District of the Kursk Region for allocation of a plot of 500 hectares of agricultural land as a life-time inheritable possession (*право пожизненного наследуемого владения*) for the founding of Luch Farm, together with the following partners in Luch Farm: A.V. Gerasimov, S.V. Kapustin, N.N. Belov, A.N. Kazyulkin and A.F. Kapustin.

45. Following applications by members of the Kapustin collective farm, namely V.A. Zhigalev, A.V. Gerasimov, S.V. Kapustin, N.N. Belov, A.N. Kazyulkin and A.F. Kapustin, seeking to leave the farm and be granted a plot of land, on 11 April 1992 the administration of Kapustin collective farm had decided that the said individuals would leave the collective farm with a share of 5.15 hectares each.

46. On 14 April 1992 the Head of the District Administration had adopted Resolution no. 111 which stated that, pursuant to the above decision by the administration of Kapustin collective farm, a plot of 31 hectares from the land of Kapustin collective farm was to be given, free of charge, in ownership, for the founding of Luch Farm. In the same Resolution the District Administration had ordered that a plot of 315 hectares of plough land be given to Luch Farm in lease for five years. The Resolution had further confirmed V.A. Zhigalev as head of Luch Farm and A.V. Gerasimov, S.V. Kapustin, N.N. Belov, A.N. Kazyulkin and A.F. Kapustin as partners in Luch Farm. The Resolution had further stated that the Land Committee had been directed to delimit the plots of land on site and to issue a Land Certificate for the right to use the land.

47. The Land Committee had delimited the plot of 30.9 hectares on site, drawn up a plan and prepared a Land Certificate, numbered 300200006, certifying the right of ownership to this plot of land, in which V.A. Zhigalev had been specified as the sole owner of the land.

48. Having examined an application submitted on 9 June 1992 by V.A. Zhigalev, head of Luch Farm, to grant the land to Luch Farm in life-time inheritable possession and not in lease, the Head of the District Administration had adopted Resolution no. 167 of 14 July 1992, by which the earlier Resolution no. 111 had been amended in respect of the plot of 315 hectares. It had now stated:

> ‘That 315 hectares of arable land is to be transferred from a special land fund to Luch Farm in life-time inheritable possession, in the following shares:
>
> 1. V.A. Zhigalev 52.5 ha [hectares]

2. A.V. Gerasimov 52.5 ha [hectares]

3. S.V. Kapustin 52.5 ha [hectares]

4. N.N. Belov 52.5 ha [hectares]

5. A.A. Kazyulkin 52.5 ha [hectares]

6. A.F. Kapustin 52.5 ha [hectares]'

49. Following Resolution no. 167 the Land Committee had prepared another Land Certificate, numbered 30020006, certifying the right of ownership to the same plot of 30.9 hectares and the right of life-time inheritable possession to the plot of 315 hectares, in which V.A. Zhigalev was again specified as the sole owner and possessor of both plots of land.

50. In the light of the above findings of fact, the Commercial Court of the Kursk Region found that the fact that Land Certificate no. 300200006 did not specify the share of 5.15 hectares belonging to each partner in Luch Farm ran counter to the content of Resolution no. 111 and to the law, particularly section 15 of the Farming Enterprise Act (*«О крестьянском (фермерском) хозяйстве»*), which provided that the property of a farm belonged to its members as common share property or as common joint property. The court further held that the same omission – the lack of information concerning the share of land for each partner in Luch Farm - in Land Certificate no. 30020006 was unlawful on the same grounds.

51. In a judgment of 21 April 1999 the Commercial Court of the Kursk Region declared Land Certificates no. 300200006 and no. 30020006 null and void. The court rejected the remainder of the prosecutor's claim concerning Resolutions no. 111 of 14 April 1992 and no. 167 of 14 July 1992, issued by the Head of the District Administration, because the court found no grounds to declare the said Resolutions unlawful.

2. Decision of 8 June 1999

52. Mr Zhigalev, head of Luch Farm, appealed against the judgment on the ground that the first-instance court had refused to examine his submission concerning the limitation period. At a hearing on 8 June 1999, in which the parties and Mr Zhigalev in his capacity as a third party participated, the Appeals Division of the Commercial Court of the Kursk Region, sitting as a bench of three judges, examined the appeal.

53. It noted that on the basis of Resolutions nos. 111 and 167, issued by the Head of the District Administration, the land had been allotted to each of the partners in Luch Farm. Land Certificates no. 300200006 and no. 30020006, issued in Mr Zhigalev's name on the basis of those Resolutions, had been found to be unlawful by the first-instance court.

54. It further noted that it followed from the applicant's appeal that the only ground for quashing that court's judgment was its refusal to examine

the applicant's submission concerning the limitation period. However, the court held that, pursuant to Article 39 of the Code of Commercial Procedure and Article 199 of the Civil Code, only a party to a case was entitled to request the application of a limitation period. As the applicant was not a party to the case it was not open to him to lodge such a request. The court dismissed the appeal and upheld the judgment of 21 April 1999.

3. Decision of 29 July 1999

55. The applicant lodged a cassation appeal, in which he requested that the decisions of the lower courts be quashed as they had allegedly been delivered in breach of the procedural and material law. In particular, he complained that his request for participation in the proceedings in the capacity of a defendant had been unlawfully rejected, which allegedly deprived him of the possibility to assert his rights to the land. The appeal was examined on 29 July 1999 by the Federal Commercial Court of the Central Circuit, sitting as a bench of three judges, in the presence of the parties and Mr Zhigalev as a third party. The court summarised its findings as follows.

56. It followed from the materials of the case file that, in accordance with Resolutions no. 111 and no. 167, issued by the Head of the District Administration, the land had been given to each of the partners in Luch Farm.

57. However, the Land Certificates had been issued in Mr Zhigalev's name as the owner of the land, without specifying the shares of the other five partners in the farm.

58. As these Land Certificates contradicted Resolution no. 111 and section 15 of the Farming Enterprise Act, which provided that the property of a farm belonged to its members as common share property or common joint property, the first-instance court's decision to declare null and void the Land Certificates issued in Mr Zhigalev's name had been well-founded.

59. Resolutions nos. 111 and 167 of the District Administration, pursuant to which the plots of land had been allotted for the founding of Luch Farm, had been adopted in accordance with the legislation.

60. As regards the applicant's complaint alleging the court's failure to join him to the proceedings as a co-defendant, the first-instance court had rightly rejected this request and ordered that the applicant be joined to the proceedings as a third party, because the claims concerned documents adopted by the District Administration and the Land Committee. The claims had been admitted by the defendants. The parties to the proceedings had not raised the issue of the expiry of a limitation period. Mr Zhigalev was not a party to the present dispute and the right to request the application of a limitation period was therefore not vested in him.

61. In those circumstances the judgment of the first-instance court and the decision of the appeal court had been lawful and well-founded.

62. By a decision of 29 July 1999 the Federal Commercial Court of the Central Circuit upheld the judgment of the Commercial Court of the Kursk Region of 21 April 1999 and the decision of the Appeals Division of the Commercial Court of the Kursk Region of 8 June 1999.

F. Proceedings concerning Resolution no. 35 and Land Certificate no. 300200167

63. Following the outcome of the above proceedings, on 14 February 2000 the District Administration adopted Resolution no. 35, in which it ordered that the old Land Certificates no. 300200006 and no. 30020006 be annulled and a new Land Certificate be issued to Luch Farm by the Land Committee in accordance with the District Administration's Resolution no. 167 of 14 July 1992 and the Farming Enterprise Act. In pursuance of Resolution no. 35 the Land Committee issued a new Land Certificate to Luch Farm, numbered 300200167, which stated that Luch Farm owned the plot of 315 hectares, and that each of the six partners in Luch Farm owned a share of 52.5 hectares of that land.

64. On 16 February 2001 Mr Zhigalev, acting as head of the farm, brought an action on behalf of Luch Farm before the Commercial Court of the Kursk Region against the District Administration. He requested that Resolution no. 35, by which he had allegedly been deprived of his rights to the land, and Land Certificate no. 300200167 be declared void.

65. By Resolution no. 127 of 14 June 2001 the District Administration annulled its Resolution no. 35, considering that it had been adopted erroneously. On 27 September 2001 the court terminated the proceedings in respect of the applicant's claim concerning Resolution no. 35, on the ground that the said Resolution had already been quashed.

1. Proceedings concerning Land Certificate no. 300200167

66. The court examined the applicant's request to annul Land Certificate no. 300200167 and granted it for the following reasons, as stated in its judgment of 27 September 2001.

67. Resolution no. 35, on the basis of which the Land Certificate had been issued, had been quashed.

68. According to the relevant legislation in force at the material time (the Law on the State Registration of Rights to Immovable Property and Decrees no. 1767 of 27 October 1993 and no. 112 of 25 January 1999 of the President of the Russian Federation), the correct legal document certifying an individual's right to land was a registered "Land Title Certificate" (*свидетельство о государственной регистрации прав на землю*) and not a "Land Certificate" (*государственный акт на землю*).

69. The court further addressed the applicant's argument that District Administration Resolution no. 167 of 14 July 1992 was null and void in that

it had allotted the land to each of the six farmers in equal shares, allegedly in breach of the law. The court held that this issue had already been examined in the earlier proceedings, which had ended with the judgment of the Commercial Court of the Kursk Region of 21 April 1999, as upheld by higher courts, whereby the application to have Resolution no. 167 declared null and void had been dismissed. In accordance with Article 58 § 2 of the Code of Commercial Procedure and Decision no. 13 of the Plenary Supreme Commercial Court of 31 October 1996, the above judgment was binding, and the facts once established in a previously decided case were not subject to proof again in a case involving the same persons.

2. Proceedings concerning Resolution no. 35

70. On 21 March 2002 the Federal Commercial Court of the Central Circuit quashed the decision of 27 September 2001 of the Commercial Court of the Kursk Region, whereby that court had terminated the proceedings with regard to the applicant's claim in respect of Resolution no. 35.

71. During a fresh examination of this part of the case by the Commercial Court of the Kursk Region, the applicant specified his claims. He asserted that Resolution no. 35 violated the rights of Luch Farm and his rights as a founder of the farm by depriving the farm of its right of ownership to 30.9 hectares and its right of life-time inheritable possession to 315 hectares. Mr Zhigalev claimed that all this land should belong to him as head of the farm because he was the only person whose name had appeared on Land Certificates no. 30020006 and no. 300200006. In support of his claims the applicant referred to the unlawfulness of Resolutions no. 111 of 11 April 1992 and no. 167 of 14 July 1992, issued by the Head of the District Administration, to the lawfulness of Land Certificates no. 30020006 and no. 300200006, issued in his name, and to the fact that the District Administration had exceeded its authority when adopting Resolution no. 35 of 14 February 2000.

72. A representative of the defendant (that is, the District Administration) submitted that the contested Resolution no. 35 had merely followed the judgment of 21 April 1999 of the Commercial Court of the Kursk Region, as upheld by higher courts, whereby Land Certificates no. 30020006 and no. 300200006, issued in Mr Zhigalev's name, had been declared null and void. Resolution no. 35 had then been reversed because it had been adopted erroneously. The defendant authority further submitted that the applicant now had no documents certifying his title to the land and that neither the District Administration nor the Land Committee had taken any measures to confiscate the land from Luch Farm, which could continue farming it.

73. The court pointed out that the judgment of the Commercial Court of the Kursk Region of 27 September 2001 had declared null and void Land

Certificate no. 300200167, issued by the Land Committee pursuant to Resolution no. 35, because, in accordance with the legislation then in force, the correct legal document certifying rights to land was a Land Title Certificate, issued by a Department of the Ministry of Justice for the Registration of Rights to Immovable Property and Transactions with Immovable Property.

74. The court noted that the legal documents establishing the rights to the land in the present case were Resolutions no. 111 and no. 167 of 1992, issued by the Head of the District Administration. These Resolutions had been declared lawful by the final judgment of the Commercial Court of the Kursk Region of 21 April 1999, as upheld by higher courts. The applicant's argument concerning the unlawfulness of the said Resolutions was therefore unfounded.

75. The court further noted that Land Certificates no. 30020006 and no. 300200006, which were the legal documents certifying the rights to the land, had been declared unlawful by the above-mentioned court judgment, which was final. The applicant's contention about the lawfulness of these Land Certificates was thus also unfounded.

76. In so far as the applicant claimed that Resolution no. 35 infringed upon the rights of Luch Farm to the plots of land measuring 30.9 hectares and 315 hectares, the court found that neither the District Administration nor the Land Committee had taken any measures to confiscate the land from Luch Farm or any other actions which would prevent the farm from cultivating the land. This fact was not disputed by the applicant, who submitted to the court that the land had not been farmed for years because he had been involved in litigation.

77. The court found that Resolution no. 35 had no adverse effect on the land rights of Luch Farm. As to Mr Zhigalev's rights, the court had previously given decisions in this respect which had binding effect, and commercial courts no longer had jurisdiction over such claims.

78. By a judgment of 10 June 2002 the Commercial Court of the Kursk Region therefore dismissed the applicant's claims. The judgment was upheld by a decision of the Federal Commercial Court of the Central Circuit of 26 December 2002.

G. Other proceedings

79. Luch Farm was involved in various other court proceedings during 1997-2005, including proceedings with regard to tax disputes. It was represented in court by Mr Zhigalev as head of the farm.

H. Resolution no. 111 of 14 April 1992

80. Resolution no. 111 of 14 April 1992 stated:

"HEAD OF THE BOLSHESOLDATSKIY DISTRICT ADMINISTRATION,

KURSK REGION

RESOLUTION

14 April 1992, no. 111

[the village of] Bolshoye Soldatskoye

'On the allocation of a plot of land for the purpose of setting up Luch Farm'

Having examined the application from Mr V.A. Zhigalev concerning the allocation of a plot of land for the purpose of organising Luch Farm, and governed by the RSFSR "Farming Enterprise Act", by the Resolution of the Presidium of the RSFSR Supreme Council and the RSFSR Council of Ministers of 15 March 1991 on additional measures to expedite land reform in the RSFSR, and by the RSFSR Land Code,

I hereby order:

1. that a plot of land with an overall area of 31 hectares, including 31 ha of arable land, be allocated free of charge as property [ownership] for the establishment of Luch Farm, from the territory of the former collective farm Kapustin (in accordance with the applications submitted to the administration of the Kapustin collective farm and on the basis of the decision by the collective farm's administration on the withdrawal as members of the collective farm, with a share of land and a stock share, of Vladimir Alekseyevich Zhigalev, Aleksey Valentinovich Gerasimov, Sergey Viktorovich Kapustin, Nikolay Nikolayevich Belov, Vladimir Arkhipovich Davydov, Anatoliy Nikolayevich Kazyulkin and Aleksey Fedorovich Kapustin).

that a plot of land measuring 315 hectares in total, 315 hectares of which are to be arable land, is to be transferred from a special fund to Luch Farm on a five-year lease.

2. That Vladimir Alekseyevich Zhigalev be confirmed as head of Luch Farm, and that the following individuals be confirmed as partners in the farm:

1. A.V. Gerasimov
2. S.V. Kapustin
3. N.N. Belov
4. A.N. Kazyulkin
5. A.F. Kapustin

3. That the District Committee for Land Reform and Land Resources carry out land-development work by 15 April 1992 in order to delimit the plot of land on site (on the terrain), and draw up a state certificate on the right to use the land [land certificate].

...

Head of the Administration [signed by] D. Shatalov"

I. Resolution no. 167 of 14 July 1992

81. Resolution no. 167 of 14 July 1992 stated as follows:

"HEAD OF THE BOLSHESOLDATSKIY DISTRICT ADMINISTRATION,

KURSK REGION

RESOLUTION

14 July 1992, no. 167

[the village of] Bolshoye Soldatskoye

'On the amendment of resolution no. 111 of 14 April 1992 by of the Head of the administration"

On the basis of the application from Mr V.A. Zhigalev, as head of the farming enterprise 'Luch', concerning the allocation of 315 hectares of arable land in life-time inheritable possession,

I hereby order:

1. that clause no. 1 paragraph two of resolution no. 111 of 14 April 1992 by the Head of the administration "On the allocation of a plot of land for the purpose of setting up Luch Farm" be considered invalid and be [re]stated as follows:

'That 315 hectares of arable land is to be transferred from a special land fund to Luch Farm in life-time inheritable possession, in the following shares:

1. V.A. Zhigalev 52.5 ha [hectares]
2. A.V. Gerasimov 52.5 ha [hectares]
3. S.V. Kapustin 52.5 ha [hectares]
4. N.N. Belov 52.5 ha [hectares]
5. A.A. Kazyulkin 52.5 ha [hectares]
6. A.F. Kapustin 52.5 ha [hectares]'

[signed by] S. Novosiltsev, First Deputy Head of the Administration, for the Head of the Administration"

J. Land Certificate no. 30020006

82. The applicant submitted to the Court a copy of Land Certificate no. 30020006 which stated:

"STATE CERTIFICATE

on rights of ownership of land, life-time inheritable possession and (permanent) use of land without limit of time

no. 30020006

This state certificate is issued to the following owner, property-holder and/or user of the land:

Vladimir Alekseyevich Zhigalev, of the farming enterprise 'Luch', Kursk Region, Bolshesoldatskiy District, Izvekovo village,

by the Bolshesoldatskiy District Administration,

Confirming that, by Resolution no. 111 of 14 April 1992 of the Bolshesoldatskiy District Administration, the above mentioned owner, property-holder and/or user of the land is allocated in total 345.9 hectares of land, including 30.9 hectares as property [ownership], free of charge, and 315 hectares as a life-time inheritable possession, as indicated on the plan, in order to set up the farming enterprise 'Luch'.

This State Certificate is drawn up in two copies: the first is issued to Vladimir Alekseyevich Zhigalev (the owner, property-holder and/or user of the land), the second is to be kept by the Bolshesoldatskiy District Administration.

The certificate is registered as no. 7 in the Register Book of State Certificates on property, possession and land-use rights.

[signed by] D.F. Shatalov, Head of the Bolshesoldatskiy District Administration

...

Quantitative description of land allocated as property, in ownership or for use:

V.A. Zhigalev (the owner, property-holder and/or user of the land)

(hectares)

Total land	Including agricultural areas	Arable land
As property		
30.9	30.9	30.9

In life-long inheritable possession		
315	315	315

[the Certificate is signed by] V.N. Kolkov, Chair of the Committee for Land Reform and Land Resources of the Bolshesoldatskiy District

..."

II. RELEVANT DOMESTIC LAW

A. Farming enterprise

83. At the time that Luch Farm was founded, the establishment and activity of farming enterprises were regulated by the Federal "Farming Enterprise Act" (*О крестьянском (фермерском) хозяйстве*) no. 348-1 of 22 November 1990.

84. Under section 1 of the Act, a farm may be comprised of one individual, a family or a group of persons. The head of a farm is one of its capable partners. He or she represents the farm in dealings with enterprises, organisations, citizens and state organs.

85. Under section 5 of the Act, on the basis of an application from an individual wishing to set up a farm, a plot of land is transferred to him or her in use, in life-time inheritable possession or in ownership by a decision of the local authority. The number of partners in a farm is taken into account in determining the size of a plot of land to be allotted for setting it up.

Where a plot of land is transferred in ownership, a decision by the local authority serves as a basis for issuing a Land Certificate, which certifies the ownership of the land.

The land for setting up a farm is transferred in ownership free of charge within statutory norms, and is subject to payment in cases exceeding such norms.

86. Under section 6 of the Act, local, district and town authorities establish land funds for the purpose of organizing farms by, *inter alia*, taking land from collective farms on receipt of applications from individuals wishing to set up farms. Members of a collective farm are entitled to leave it, to receive a plot of land and to found their own farming enterprise. Their applications are examined by the collective farm's administration then by the local district or town authority, which takes the final decision (section 8 of the Act).

87. Under section 14 of the Act, the property of a farming enterprise comprises plants, buildings, cattle, equipment and machinery, vehicles and other property necessary for carrying out its activity.

88. Under section 15 of the Act, the property of a farming enterprise belongs to its partners in common share ownership or in common joint ownership, if the latter course has been decided unanimously by those partners.

89. According to the Land Code of 1991, certain categories of land may only be owned as a "life-time inheritable possession" (*право пожизненного наследуемого владения*), which means that the land may be possessed, used and left to one's successors, but may not be sold to anyone except the State.

B. Third parties in proceedings

90. According to Article 34 of the Code of Commercial Procedure of 1995, in force at the material time, two parties enjoy full and equal procedural rights in proceedings, namely the plaintiff and the defendant.

91. Under Article 38 of the Code, third parties with their own claims in respect of the subject-matter of a dispute may join the proceedings prior to the court's delivery of a judgment. They enjoy practically all the procedural rights of a plaintiff.

92. Under Article 39 of the Code, third parties without their own claims in respect of the subject-matter of a dispute may join the proceedings on the side of the plaintiff or defendant prior to the court's delivery of a judgment, provided that the judgment is liable to affect their rights or obligations towards one of the parties to the case. They enjoy the same procedural rights as a party to the proceedings, save for the rights to abandon a suit, to alter its ground or subject-matter, to increase or reduce the amount of a claim, to accept a suit, to conclude a friendly settlement agreement and to request the execution of a judgment.

C. Limitation periods

93. According to Article 199 of the Civil Code, a limitation period is to be applied by a court only at the request of a party to a dispute, and the request must be made prior to delivery of a judgment. Where such a request is made, the expiry of a limitation period may serve as a ground for the court to dismiss an action.

94. Under Article 196 of the Civil Code, the general limitation period for civil claims is three years.

95. Under Article 181 of the Civil Code, an action seeking a remedy in the event of a void transaction may be brought within ten years of the date when the performance thereof commenced.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

96. At the hearing, the Government submitted in respect of the applicant's complaint under Article 1 of Protocol No. 1 that, once the Commercial Court of the Kursk Region had delivered its judgment of 21 April 1999, it had been open to the applicant to bring a separate suit asserting his rights to the land. However, he had chosen not to do so.

97. In their submissions after the case had been declared admissible, the Government supplemented the above non-exhaustion argument with references to Articles 301, 303 and 305 of the Civil Code.

98. Before the present case was declared admissible, the Government had similarly argued in respect of the applicant's complaint under Article 6 § 1 that it had been open to the applicant to lodge a separate suit asserting his rights to the land in dispute, in which case he could have enjoyed the full procedural rights of a plaintiff. As the applicant had not availed himself of that opportunity, the complaint should be declared inadmissible on the ground of non-exhaustion of domestic remedies.

99. Further, after the case had been declared admissible the Government raised the issue of the applicant's victim status. They pointed out that, in an interview to the Kursk newspaper "*Drug Dlya Druga*" of 22 February 2005, Mr Zhigalev had asserted:

> "When I was still preparing the application 'good people' advised: ['D]id you ever see anyone succeeded in deceiving the State?['] It seems the representatives of Russia in the [Strasbourg] court thought the same way."

The Government submitted that it followed from the above statement by the applicant that the purpose of his application to the Court was to deceive the State, and that therefore the applicant had abused his right to appeal to the Court. Accordingly, the Government continued, the applicant was not a victim of the alleged violations of the Convention and his application should be struck out of the Court's list of cases.

100. The applicant disagreed with the Government. He submitted that the Government had failed to indicate with sufficient clarity the effective remedies that he had allegedly failed to exhaust. Pointing to his participation in the various proceedings described in the facts part of the present judgment, the applicant asserted that he had exhausted all relevant and sufficient domestic remedies.

101. The Court considers that it is not necessary to examine the Government's objections in view of the following findings.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

102. The applicant complained that his right to the peaceful enjoyment of his possessions – the plot of 30.9 hectares of land given to him in ownership and the plot of 315 hectares of land given to him in life-time inheritable possession - had been violated as a result of the outcome of the proceedings brought by the prosecutor. He relied on Article 1 of Protocol No. 1, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The parties' submissions

1. The Government

103. The Government submitted that Article 1 of Protocol No. 1 guaranteed the protection of property which was in an individual's lawful possession. The mere fact that Land Certificates no. 30020006 and no. 300200006 had been issued in Mr Zhigalev's name did not suffice for him to be considered as the lawful owner of the plots of 30.9 and 315 hectares of land.

104. Pursuant to section 15 of the Farming Enterprise Act (no. 348-I of 22 November 1990), the property of a farm belonged to all its partners as common share property or common joint property, if the latter course was decided unanimously by a farm's partners. Luch Farm had comprised Mr Zhigalev, the head of the farm, and five partners in the farm, namely Mr A.V. Gerasimov, Mr S.V. Kapustin, Mr N.N. Belov, Mr A.N. Kazyulkin and Mr A.F. Kapustin. In representing Luch Farm in judicial proceedings and paying taxes, the applicant had always acted as the head of Luch Farm, representing the Farm, and not in his personal capacity as a physical person. The applicant's allegation that the other five farmers had been the hired workers of Luch Farm and not partners in it had had no basis in fact or law. The Government referred to Resolutions no. 111 and no. 167, issued by the Head of the Bolshesoldatskiy District Administration, and the proceedings concerning Mr Zhigalev's dismissal of the farmers in which it had been established, by a judgment of the Bolshesoldatskiy District Court of the

Kursk Region of 28 December 1998, that the farmers had been partners in the farm and not its hired workers.

105. The above-mentioned Land Certificates had been issued in breach of the above provision of section 15 of the Farming Enterprise Act, a fact which had eventually been confirmed by the domestic courts at three levels, following an application by the prosecutor, lodged on the basis of complaints by the partners in Luch Farm, within the ten-year limitation period provided for by Article 181 of the Civil Code for void transactions. The said Law had been officially published. As head of Luch Farm, Mr Zhigalev had been informed of the Act when setting up Luch Farm. These provisions of the Act had been sufficiently precise and foreseeable for the applicant and had pursued the legitimate purpose of a fair distribution of property between the partners in a farm.

106. As the Land Certificates issued in Mr Zhigalev's name had been declared void *ab initio* because they had been issued unlawfully, the applicant had had no lawful possessions within the meaning of Article 1 of Protocol No. 1 which could entail the applicability of this Convention provision.

107. The Government further submitted that the fact of declaring Land Certificates no. 30020006 and no. 300200006 null and void had not deprived the applicant of his legitimate share in the land allotted for the founding of Luch Farm. It was open to the applicant to register his rights to his share in the land of Luch Farm and to obtain the relevant state Land Title Certificates. However, the applicant, who disagreed with the outcome of the proceedings declaring the Land Certificates invalid, had never done so. The other five farmers had not done so either, in order to avoid further conflict. As a result, the land, which had never been confiscated, remained unfarmed.

108. The Government emphasised that no one had ever laid claim to Mr Zhigalev's share in Luch Farm's land. On the contrary, Mr Zhigalev had attempted to take land belonging to the other partners in the farm, which had never belonged to him.

109. The interference with the applicant's rights had been lawful and proportionate, had not entailed a deprivation of property and had not imposed an excessive burden on the applicant in the circumstances of the case. The applicant, who had misappropriated the land belonging to the other partners in Luch Farm without any basis in law and without payment, had been obliged to return what he had misappropriated. The Government argued firstly that, in reversing Land Certificates no. 30020006 and no. 300200006, the State, acting in the public interest, had performed its supervision over a fair distribution of the land between the partners in the farm. Referring to the case of *Buckley v. the United Kingdom* (judgment of 25 September 1996, *Reports of Judgments and Decisions* 1996-IV), the Government underlined that the domestic authorities had been in a position

to decide themselves what should be understood as the interests of society in exercising land management and agriculture development policy. Secondly, the interference had been lawful in that it complied with section 15 of the Farming Enterprise Act.

110. The quashing of Land Certificates no. 30020006 and no. 300200006 had not entailed any unfavourable material consequences for the applicant, who had never claimed, before the courts or any other authority, that the quashing of the Land Certificates had caused him damage and had thus never requested compensation in that connection.

111. The Government concluded that there had been no violation of Article 1 of Protocol No. 1 in the present case.

2. The applicant

112. The applicant contested the Government's view. He submitted that it was he who had received the land. The other five farmers involved in the dispute ("the farmers") had been hired workers of Luch Farm and not partners in it. They had never applied for possession of the disputed land. Thus, the Commercial Court of the Central Circuit had found in its judgment of 10 December 1997 that the farmers had been unlawfully included in the list of partners in Luch Farm.

113. The applicant alleged that he had lodged two different applications for the allocation of land in order to set up Luch Farm. In the first he had asked that the land be allotted to him and ten other persons for the purpose of setting up Luch Farm. In the second, in which he had stated that six other persons would be his employees, he had asked that the land be given to him alone. It was the second application which had been accepted. Further, according to the applicant, there had existed two different versions of Resolution no. 111 of 14 April 1992, one of which stated that, along with the applicant, there had been five other partners in the farm. The other version of the Resolution allegedly stated that the land had been given to the applicant alone. The applicant submitted an unsigned copy of the latter version.

114. The applicant stated that he was leaving aside the issue of the lawfulness of his acquisition of the plot of land because, at any rate, by the time the prosecutor had brought his action, the three-year limitation period had already expired. The legitimate purpose of the limitation period was to establish the certainty of title to land and of possession.

115. The applicant submitted that he had successfully farmed the land. The prosecutor's action and the outcome of the ensuing proceedings had interfered with his peaceful enjoyment of his land. The farmers had never presented any claims. The prosecutor had failed to submit how the land possession was to be organized and whether Luch Farm would retain its possession of the land. The domestic courts had not determined this issue either. In those circumstances, the aim of the prosecutor's suit was simply to

take away the land possessed by Luch Farm, without any intention of restoring state and public interests. It had not been legitimate and proportionate and it had imposed an excessive burden on Luch Farm. The interference had destroyed Luch Farm and the quality of the land, which had not been farmed. The domestic courts had failed to find a fair balance between the genuine public interest and the private interests of Luch Farm. An excessive individual burden had been imposed on the applicant as a result of the uncertainty concerning the legal status of the possession of the plot granted to Luch Farm, because a permanent threat of expropriation by the other persons involved of the results of his efforts, such as the crops, had hung over him. The national authorities had thus violated the applicant's rights guaranteed by Article 1 of Protocol No. 1.

116. The applicant further stated that he had been deprived of his possessions unlawfully. The Farming Enterprise Act, which regulated the setting up of farming enterprises at the material time, had not been sufficiently precise with regard to the founding of farms by several persons. Thus, the Act had not specified when and in what form an agreement between the partners in a farm should be made. Nor had the Civil Code given answers to those questions. No regional legislation had existed at the time, and administrative or judicial practice had not yet been formed because the Farming Enterprise Act had been too recent. Therefore, the applicant could not have known with a reasonable degree of certainty, even with appropriate legal advice, whether the setting up of Luch Farm had been proper or unlawful, and he could not have foreseen the consequences of his actions.

117. The applicant noted that there had been no agreement on the establishment of Luch Farm between the partners in the farm, and that there was no reason why one should have existed, since he had founded the farm alone. Despite his applications to that effect, in the proceedings brought by the prosecutor the domestic courts had never examined his submission that he had been the sole founder of Luch Farm.

118. The applicant asserted that the interference with his rights had amounted to control of the use of property, and that the second paragraph of Article 1 of Protocol No. 1 should apply.

119. The applicant submitted that he had participated in many sets of court proceedings in order to secure his property rights. He had stopped farming the land because of the resultant lack of time and resources. However, the domestic courts had not determined the main question with sufficient clarity, namely the form of ownership of Luch Farm's land and the proper approach to use of it by the applicant and his family or by the applicant and the other persons involved.

120. The applicant submitted that he had not asked for compensation in connection with the interference with his rights to the land because this would have signified his consent to the domestic courts' decision annulling

the Land Certificates, which he had never accepted. The applicant further explained that he could not apply for compensation because, from the domestic courts' point of view, the actions of the District Administration and the prosecutor's office had been legal and reasonable. This meant that, under the applicable legislation (Articles 16, 1064 and 1069 of the Civil Code), the applicant had had no legal grounds for applying for compensation.

121. The applicant noted that, as head of the farm, he had brought proceedings for compensation on behalf of Luch Farm against the District Administration in connection with the damage caused by the unlawful adoption of Resolutions nos. 153, 154 and 157. His claim had been dismissed by the Federal Commercial Court of the Central Circuit's decision of 5 May 1999.

122. The applicant concluded that his property rights had been violated in that the interference with his rights had not been provided for by law within the meaning of Article 1 of Protocol No. 1, since the law had not been sufficiently precise and foreseeable and the interference had imposed an excessive individual burden on him and had not been compatible with the "fair balance" requirement in that he had had no right to compensation.

3. The third party

123. Mr A.V. Gerasimov, Mr S.V. Kapustin, Mr A.F. Kapustin, Mr A.N. Kazyulkin's heir Ms S.N. Kazyulkina and Mr N.N. Belov's heir Ms V.A. Belova, partners in Luch Farm, made submissions as to the facts of the case which essentially concurred with the findings of the Commercial Court of the Kursk Region in its judgment of 21 April 1999.

124. They submitted that the reason for the various disputes between them and Mr Zhigalev was that Mr Zhigalev had considered himself the sole owner of the property of Luch Farm and the other farmers as its hired workers, an allegation which had had no basis in reality. He had prevented the other farmers from taking part in the administration of the farm and in the distribution of profit. The farmers had repeatedly complained to the prosecutor of the Kursk region about Mr Zhigalev's violations of their rights. As a result, on 16 February 1999 the prosecutor had brought proceedings before the Commercial Court of the Kursk Region, in the state and public interest, seeking in particular to invalidate the Land Certificates wrongly issued by the Land Committee in Mr Zhigalev's name alone. By the judgment of 21 April 1999 the court had declared the Land Certificates null and void.

125. Neither the above judgment nor any other decisions of the domestic courts or the local authorities had deprived Mr Zhigalev of his rights to his share in the land of Luch Farm. Nothing had prevented Luch Farm from farming the land except the discords between the head of the farm and the partners in it.

126. The partners in Luch Farm asserted that there had been no basis in law for Mr Zhigalev's contention that he was the owner of the whole of the land given to Luch Farm. They referred to the provisions of the Farming Enterprise Act, in force in 1992, which governed the foundation and activity of a farm. In particular, they stressed that the property of a farm belonged to its partners as common share property (shares were to be determined only in the event of division of a farm when one of its partners decided to leave), or as common joint property, if the latter course was decided by the partners in a farm.

127. They further referred to the 1997 Law on the State Registration of Rights to Immovable Property and Transactions with Immovable Property, pointing out that under section 6 of that law, the rights to immovable property which had arisen before this law came into force were considered legally valid without having to be registered as provided for in this law. Luch Farm had been registered as a legal entity prior to 1 July 2002, pursuant to Resolution no. 112 of 14 April 1992, issued by the Head of the Bolshesoldatskiy District Administration. In accordance with section 23 of the Farming Enterprise Act, Luch Farm could maintain its status as a legal entity until 1 January 2010. Under Article 35 of the Constitution of the Russian Federation, no one was to be deprived of his property save by way of a court decision. There had been no such decision in the present case.

128. The partners in Luch Farm submitted that the purpose of Mr Zhigalev's application was to acquire land which belonged to the other partners in the farm. His complaints had no basis in fact or in law and should therefore be rejected.

129. In their comments on the third party's submissions, the Government pointed out that the rights of all the persons concerned in the present case should be respected. They asked the Court to give proper consideration to the submissions of the five partners in Luch Farm, in order to prevent a violation of their rights when deciding the case on the merits.

130. The applicant argued that the third party's submissions were irrelevant to the issues raised by the case. He submitted that his opponents had failed to prove that they had used proper legal means to challenge his behaviour and protect their property rights. Nor had they proved that they had ever tried to farm the disputed land.

B. The Court's assessment

1. General principles

131. The Court recalls that Article 1 of Protocol No. 1 does not guarantee the right to acquire property (see *Van der Mussele v. Belgium*, judgment of 23 November 1983, Series A no. 70, p. 23, § 48; *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX). This provision does no

more than enshrine the right of everyone to the peaceful enjoyment of "his" possessions, and that consequently it applies only to a person's existing possessions (see *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, p. 23, § 50). Where a person actually possessed a property and was considered its owner for all legal purposes he or she can be said to have had a "possession" within the meaning of Article 1 of Protocol No. 1 (see *Bečvář and Bečvářová v. the Czech Republic*, no. 58358/00, § 131, 14 December 2004). "Possessions" can also be assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right (*Kopecký,* ibid, § 35). By way of contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1. A "legitimate expectation" must be of a nature more concrete than a mere hope, and must be based on a legal provision or a legal act such as a judicial decision (*Kopecký,* ibid, §§ 35, 49). A person who complains of a violation of his or her right to property must first show that such a right existed (see *Pištorová v. the Czech Republic*, no. 73578/01, § 130, 26 October 2004).

2. Application of the above principles to the present case

132. The Court notes that the parties have different positions in respect of whether the applicant had a property right to the land in question. In particular, the applicant submitted that the issue of the lawfulness of his acquisition of the rights to the land should be left aside as the three year limitation period envisaged by domestic law had expired. In view of the Convention principles cited above, the Court cannot accept this argument. Having regard to the relevant points of law and of fact, it must determine whether the circumstances of the case, considered as a whole, conferred on the applicant a substantive interest protected by Article 1 of Protocol No. 1.

133. The applicant's complaint before the Court originated in the domestic courts' finding of invalidity in respect of Land Certificates no. 30020006 and no. 300200006 issued by the Land Committee (the judgment of the Commercial Court of the Kursk Region of 21 April 1999, as upheld by higher courts). These Land Certificates concerned a plot of 30.9 hectares and a plot of 315 hectares, which were allotted by the local authority for the purpose of setting up Luch Farm and which, according to the applicant, belonged to him, as head of Luch Farm, alone. The applicant based this allegation mainly on the fact that the Land Certificates had been issued in his name and had not contained information on the rights to the land of the other five persons involved in the dispute. According to the applicant, these persons were not partners in Luch Farm but its hired workers, and they therefore had no rights to the land allotted to it.

134. The Court notes that these contentions should primarily be a matter for assessment by the domestic courts, based on the relevant evidence and domestic law.

135. The Court observes that it follows from the findings of the Commercial Court of the Kursk Region in its judgment of 21 April 1999 in respect of the facts of the case, which was upheld by higher courts (see paragraphs 43-62 above), that there were six partners in Luch Farm – Mr V.A. Zhigalev, who was also head of the farm, Mr A.V. Gerasimov, Mr S.V. Kapustin, Mr N.N. Belov, Mr A.N. Kazyulkin and Mr A.F. Kapustin. The plot of 31 hectares had been given to Luch Farm so that each of the above partners received a plot of 5.15 hectares in ownership from the lands of the former Kapustin collective farm, whose members they had all previously been. The plot of 315 hectares had been given to Luch Farm so that each of its partners received a plot of 52.5 hectares in life-time inheritable possession.

136. The Commercial Court of the Kursk Region held in the above judgment that the Land Committee had erroneously issued Land Certificates no. 300200006 and no. 30020006 in Mr Zhigalev's name, failing to specify the land rights of the other five partners in the farm. In so doing it had breached the relevant provisions of domestic law and the decision of the competent local authority, which had ordered that the land in question be given for the founding of Luch Farm, and which further ordered that the Land Committee should implement this decision by delimiting the plot of land on site and issuing a Land Certificate (Resolution no. 111 of 14 April 1992, issued by the Head of the Administration of the Bolshesoldatskiy District of the Kursk Region, as amended by Resolution no. 167 of 14 July 1992). The said Resolutions provided that the land be given in equal shares to each of the six partners in Luch Farm. The Commercial Court of the Kursk Region further held that the Land Committee's failure to specify the land rights of the partners in the farm in the Land Certificates had breached the Farming Enterprise Act. Section 15 of that Act expressly provided that the property of a farm belonged to its partners as common property.

137. The Court notes that the above findings were reached by the domestic courts in proceedings in respect of which the applicant also complains, within the present proceedings, that there was a violation of Article 6 of the Convention. However, the applicant's only concern under Article 6 which comes under the Court's current consideration is his inability to plead the expiry of a limitation period on account of his status as a third party. This issue does not as such cast doubt on the findings of the courts cited above. Furthermore, the Court observes that, in other proceedings involving Luch Farm in which the applicant as head of the farm enjoyed the full procedural rights of a party to proceedings, the domestic courts came to the same conclusions.

138. Thus, the applicant's allegation that Mr A.V. Gerasimov, Mr S.V. Kapustin, Mr N.N. Belov, Mr A.N. Kazyulkin and Mr A.F. Kapustin had been hired workers of Luch Farm and not partners in it was touched upon in various proceedings. In the proceedings concerning the lawfulness of Resolution no. 157 of the District Administration, the question before the Federal Commercial Court of the Central Circuit was whether the District Administration had had authority to introduce amendments to a decision on the state registration of Luch Farm by supplementing it with a list of partners in the farm (see paragraphs 11-12 above). Thus, the court did not examine the above individuals' status as such. That issue was examined in the proceedings concerning the dismissal of Mr A.V. Gerasimov, Mr S.V. Kapustin and Mr A.N. Kazyulkin, in which the Bolshesoldatskiy District Court of the Kursk Region found that those persons had been partners in Luch Farm and not its hired workers and that therefore Mr Zhigalev, as head of Luch Farm, had had no authority to dismiss them (see paragraphs 18-19 above). In the proceedings concerning the damage allegedly caused by Resolutions nos. 153, 154 and 157, the Commercial Court of the Kursk Region found no evidence that Mr Zhigalev had founded Luch Farm alone. The court held that the farm had been set up by the six farmers - Mr V.A. Zhigalev, Mr A.V. Gerasimov, Mr S.V. Kapustin, Mr N.N. Belov, Mr A.N. Kazyulkin and Mr A.F. Kapustin, the latter five thus being partners in the farm (see paragraph 28 above).

139. Further, as regards the applicant's allegation that the land for setting up Luch Farm had been allotted to him alone, the Court notes that, in various sets of proceedings, the domestic courts were unanimous in finding that the decisions of the Bolshesoldatskiy District Administration on the allocation of land for setting up Luch Farm (Resolution no. 111, as amended by Resolution no. 167), which were the legal documents establishing the rights to the land in question, had ordered, as regards the plot of 31 hectares, that each of the six partners in the farm (Mr V.A. Zhigalev, Mr A.V. Gerasimov, Mr S.V. Kapustin, Mr N.N. Belov, Mr A.N. Kazyulkin and Mr A.F. Kapustin) receive a plot of 5.15 hectares of land in ownership free of charge, and, as regards the plot of 315 hectares, that each of the six partners in the farm receive a plot of 52.5 hectares of land in life-time inheritable possession (see paragraphs 22, 25, 45, 46, 48, 51, 53, 56, 59 and 74). The Court notes that the applicant never brought an action for a finding of invalidity in respect of Resolutions nos. 111 and 167. He first adverted to their alleged unlawfulness in 2001, after the Land Certificates had been declared invalid. In reply, the courts stated that the lawfulness of the Resolutions had been verified and confirmed in the earlier proceedings brought by the prosecutor which ended with the judgment of the Commercial Court of the Kursk Region of 21 April 1999, as upheld by higher courts (see paragraphs 69 and 74 above).

140. The Court has no evidence before it which would allow it to depart from the above findings of the domestic courts. Therefore, it considers that Mr Zhigalev had no other legal ground establishing his land rights than Resolution no. 111, as amended by Resolution no. 167, which expressly provided that Mr Zhigalev, as head of Luch Farm, was given no more than the plot of 5.15 hectares of land in ownership and the plot of 52.5 hectares of land in life-time inheritable possession.

141. As to Land Certificates no. 30020006 and no. 300200006, on which the applicant mainly relied in alleging that he was the sole owner of the land of Luch Farm, the Court considers that it is important to note that it was the above Resolution no. 111, as amended by Resolution no. 167, which served as a basis for issuing these Land Certificates. Thus, it was stated in the Resolution that the Land Committee was ordered to delimit the plot of land allocated to Luch Farm under the Resolution on site and to issue a Land Certificate (see paragraphs 46 and 80 above). The domestic courts' assessment of the Resolution and the Land Certificate undoubtedly indicates that the Resolution legally prevailed over the Land Certificate as the document establishing the right to land (see paragraphs 22-24, 46-50, 53, 56-58 and 74-75 above). Consequently, the Land Certificates should have been issued in pursuance and full compliance with the Resolutions. The fact that they were not, and that they contained no information on the land rights of the other partners in the farm, should not have enabled Mr Zhigalev to claim that the land had been allotted to him alone, in violation of the decisions contained in the Resolutions. Therefore, the Court considers that Mr Zhigalev's allegation that the plot of 30.9 hectares and the plot of 315 hectares belonged to him alone has no basis in the facts of the case.

142. Another reason for the domestic courts' finding of invalidity in respect of the Land Certificates was their non-compliance with the Farming Enterprise Act (section 15), which stated that the property of a farm belonged to its partners as common property (see paragraphs 50, 58 and 88 above). The said Act was referred to in Resolution no. 111 on the allocation of land for organizing Luch Farm. As head of the farm, Mr Zhigalev was or should have been aware of it. His argument that the Act was not sufficiently precise and foreseen is not persuasive. Thus, he alleges that the situation where a farm was founded by several partners was insufficiently regulated. However, his submissions do not show that his position concerning his rights to the land had a basis in law.

143. The Court further observes that the applicant failed to show that he had been treated as the owner of the plot of 30.9 hectares and the plot of 315 hectares for all legal purposes. It was never the applicant personally but Luch Farm which was treated as owner of the land in question for all legal purposes. Thus, the information before the Court suggests that it was Luch Farm which paid taxes, stood as a party to court proceedings and was referred to in decisions by the local authorities. Furthermore, it should be

noted that the domestic authorities took steps since at least 1997 to correct the situation caused by the applicant's view that he was the sole owner of the land (see paragraphs 11-19 and 28 above). The applicant was or should have been aware that there was a possibility that the Land Certificates would be cancelled.

144. The Court finds no indication that the conclusions of the national judicial authorities were arbitrary or unreasonable.

145. Having regard to the information before it and considering that it has only limited power to deal with alleged errors of fact or law committed by the national courts (see *García Ruiz v. Spain* [G.C.] no. 30544/96, § 28, ECHR 1999-I; and *Kopp v. Switzerland*, judgment of 25 March 1998, *Reports* 1988-II, p. 540, § 59), the Court considers that it cannot substitute its view for that of the domestic courts on the issues reviewed above.

146. The Court concludes that the applicant cannot, for the purposes of Article 1 of Protocol No. 1, be deemed to have had "existing possessions" or a claim amounting to a "legitimate expectation" in the sense of the Court's case-law. The applicant had a hope of having such a "possession" which had too imprecise a basis on which to found a legally-protected legitimate expectation which could give rise to "possessions" within the meaning of Article 1 of Protocol No. 1 (see *Pine Valley Developments Ltd and Others v. Ireland*, judgment of 29 November 1991, Series A no. 222, p. 23, § 51; *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 21, § 31; *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII; and *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 83, ECHR 2001-VIII).

147. This being so, the Russian court decisions and the manner in which the domestic courts applied the domestic law cannot be considered as an interference with the applicant's "possessions" within the meaning of Article 1 of Protocol No. 1.

148. The Court thus concludes that there has been no violation of Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

149. The applicant complained under Article 6 § 1 of the Convention that he had not received a fair trial in the determination of his civil rights because of his limited status as a third party to the proceedings brought by the prosecutor. In particular, the domestic courts had not examined his submission concerning the application of a limitation period. The relevant part of Article 6 § 1 provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

A. The parties' submissions

1. The Government

150. The Government submitted that the proceedings brought by the public prosecutor in the present case represented a special category of proceedings aimed at judicial supervision of administrative acts by state organs. The defendant in such proceedings was the body which had issued the relevant act, and not the beneficiary or any other person in whose interests the act had been issued. The proceedings in the present case had been aimed at protecting the legitimate rights and freedoms of other individuals which had been violated by the state organs, and not those of the applicant. However, since the dispute about the validity of the Land Certificates had indirectly concerned the question of the applicant's rights to the land at issue, it had been a dispute about the applicant's "civil rights and obligations" within the meaning of Article 6 § 1 of the Convention.

151. The Government submitted that, at the prosecutor's request, the Commercial Court of the Kursk Region had ordered the applicant's participation in the proceedings as a third party because the outcome of the case would concern his rights and interests. The applicant's participation in the proceedings as a defendant had been procedurally impossible since the proceedings had been brought by the prosecutor against the District Administration with a view to having the latter's act declared void.

152. The Government stressed that the applicant's status as a third party had afforded him ample opportunities to state his case, in practically the same way as a party to the case, given that Articles 38 and 39 of the Code of Commercial Procedure of 1995 granted third parties procedural rights that were almost identical to those of the plaintiff and defendant. The applicant had fully enjoyed his right to a court and adversarial proceedings by participating in hearings and submitting observations and appeals against court decisions. The applicant had therefore had a fair trial, as required by Article 6 § 1 of the Convention.

153. The Government further submitted that, on account of his procedural status of a third party, it had not been open to the applicant to raise the issue of expiry of a limitation period. This had been the domestic commercial courts' interpretation of the law (Article 199 § 2 of the Civil Code, Articles 34 and 44 §§ 1-3 of the Code of Commercial Procedure), which had been approved by Resolution no. 18 of 15 November 2001, issued by the Plenary Supreme Commercial Court of the Russian Federation and instructing the courts that a limitation period be applied by them only at the request of a party to a case, in other words a plaintiff or defendant, and that this right had not been vested in third parties. The Government therefore asserted that this restriction of the rights of third parties had been completely justified and lawful and was mirrored in the legislation in other

Contracting Parties to the Convention. They referred to Article 67 of the German Rules of Civil Procedure and made a general reference to the rules of procedure applicable in England and Wales. The Government noted that the prosecutor's action had been lodged within the ten-year limitation period which applied to actions seeking a remedy in the event of a void transaction.

2. The applicant

154. The applicant submitted that there had been a dispute in the present case about his civil rights and obligations and that Article 6 § 1 was therefore applicable to those proceedings.

155. The applicant noted that his request for recognition as a co-defendant in the case had been rejected by the court. He alleged that he had possessed and used the plot of land in question for seven years, and that he had certainly had his own independent claims in respect of the proceedings brought by the prosecutor against the local authority. He should therefore have been granted the status of a party to the case. The court had ordered his participation in the proceedings as a third party without independent claims, which entailed limited procedural rights. The limited scope of those rights had not allowed him to have his submission concerning a limitation period examined by the court.

156. The applicant further submitted that in accordance with the 1995 Code of Commercial Procedure and the Resolution of the Plenary Supreme Commercial Court of November 2001, a third party had had no right to request that a limitation period be applied. The applicant's right to be heard had been arbitrarily denied.

157. The applicant asserted that, as defendant, the local authorities had not argued the case and had accepted the prosecutor's claims in full. Thus, they had acted jointly with the prosecutor against the interests of the applicant, whose procedural rights had been restricted. The applicant concluded that the proceedings had not been adversarial and that his right of access to a court had been violated. The applicant asserted that the domestic courts' refusal to examine his request for the application of a limitation period had violated the principle of equality of arms and rendered the proceedings unfair.

3. The third party

158. The third party's submissions are summarised in paragraphs 123-128 above. They made no separate submissions under Article 6 § 1.

B. The Court's assessment

159. The Court recalls that Article 6 § 1 extends only to a dispute ("contestation") over a "civil right" which can be said, at least on arguable

grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the existence of a right but also to its scope and the manner of its exercise; and, finally, the outcome of the proceedings must be directly decisive for the right in question (see *Hamer v. France*, judgment of 7 August 1996, *Reports* 1996-III, pp. 1043-1044, § 73).

160. The present case concerns a dispute between the prosecutor and the applicant. The prosecutor considered that the Land Certificates issued by the Land Committee should be annulled because, *inter alia*, they did not comply with the decisions of the local authority on the allocation of the land to Luch Farm, in that they had been drawn up in Mr Zhigalev's name alone and had failed to specify the rights to the land of the other partners in the farm. Mr Zhigalev considered that the Land Committee had rightly issued the Certificates in his name alone because the land (the plot of 30.9 hectares and the plot of 315 hectares) had allegedly been given or should have been given to him alone.

161. However, as the Court has found in respect of Mr Zhigalev's complaint under Article 1 of Protocol No. 1 (see paragraphs 132-146 above), this claim had no basis in the facts of the case or in law. In view of this finding, the Court considers that for the purposes of Article 6 of the Convention the applicant did not have a "civil right" recognisable under domestic law. Therefore, he did not have a basis for the rights guaranteed by Article 6 § 1 to arise.

162. There has thus not been a violation of Article 6 § 1.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that it is not necessary to examine the Government's preliminary objections;

2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 6 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President